

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 29, 2000 Session

CAROL T. COFFEY, III v. STATE OF TENNESSEE, ET AL.

**An Appeal from the Chancery Court for Davidson County
No. 99-1342-I Irvin H. Kilcrease, Jr., Chancellor**

No. M2000-00831-COA-R3-CV - Filed August 31, 2001

This is an appeal by a prisoner plaintiff seeking review of a decision by the Board of Paroles denying his application for parole. The trial court dismissed the plaintiff's petition because it was not filed within sixty days as required by Tennessee Code Annotated § 27-9-102, and denied the plaintiff's motion for relief under Tennessee Rule of Civil Procedure 60.02. The plaintiff now appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Carol T. Coffey, III, Mountain City, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Pamela S. Lorch, Assistant Attorney General, for the appellees, State of Tennessee, et al.

OPINION

In this case, Carol T. Coffey, III, an inmate in the Northeast Correctional Center in Mountain City, Tennessee, filed a "Petition for a Writ of Certiorari" in the Chancery Court seeking review of a decision by the Tennessee State Board of Paroles denying him parole. Coffey admits that his petition was not filed within sixty days of the date the Board issued its decision, as required by Tennessee Code Annotated § 27-9-102 (2000). The trial court dismissed Coffey's petition as untimely. Coffey then filed a motion for relief under Tennessee Rule of Civil Procedure 60.02. This motion was denied. From this order, Coffey now appeals.

In this case, the essential facts are undisputed. Therefore, questions of law are reviewed *de novo* with no presumption of correctness in the trial court's decision. *See Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996). The trial court's decision to grant or deny relief

under Rule 60.02 is reviewed under an abuse of discretion standard. *See Day v. Day*, 931 S.W.2d 936, 939 (Tenn. Ct. App. 1996).

Tennessee Code Annotated § 27-9-101 provides any person aggrieved by the decision of a board or commission functioning according to State law the opportunity to appeal that decision to State courts. *See* Tenn. Code Ann. § 27-9-101 (2000). Section 27-9-102 states:

Such party shall, within sixty (60) days from the entry of the order or judgment, file a petition of certiorari in the chancery court of any county in which any one (1) or more of the petitioners, or any one (1) or more of the material defendants reside, or have their principal office, stating briefly the issues involved in the cause, the substance of the order or judgment complained of, the respects in which the petitioner claims the order or judgment is erroneous, and praying for an accordant review.

Tenn. Code Ann. § 27-9-102 (2000). The sixty-day time period is mandatory; failure to file within sixty days renders the decision of the agency final, and the courts no longer have jurisdiction to review it. *See Thandiwe v. Traugher*, 909 S.W.2d 802, 804 (Tenn. Ct. App. 1994).

Coffey does not dispute that his petition for review was not filed within the sixty-day time period mandated under Section 27-9-102. Since this requirement is absolutely mandatory, *see id.*, we find no error in the trial court's decision dismissing Coffey's complaint as time-barred.

The second issue for our consideration is whether the trial court erred in denying Coffey's motion for relief under Rule 60.02. Tennessee Rule of Civil Procedure 60.02 states:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; . . . (5) any other reason justifying relief from the operation of the judgment.

See Tenn. R. Civ. P. 60.02. In written submissions to this Court and the trial court below, Coffey asserts that the reason his petition was untimely filed is that he relied on a law library aide's advice that holidays and weekend days were not counted in the sixty-day time period under Tennessee Code Annotated § 27-9-102. If holidays and weekends are not counted, Coffey asserts, his petition was timely filed within sixty days. In support of his argument that relief under Rule 60.02 should have been granted, Coffey argues that Section 27-9-102 does not specify "calendar days," and that he, as a *pro se* litigant, should not be expected to have the knowledge that a trained legal professional would have.

However, a mistake of law is not a basis for relief under Rule 60.02. *See Thigpen v. First City Bank*, No. 01A01-9603-CV-00095, 1997 WL 351247, at *3 (Tenn. Ct. App. June 27, 1997) (citing *Food Lion, Inc. v. Washington County Beer Bd.*, 700 S.W.2d 893, 896 (Tenn. 1985)). In

Food Lion, Inc. v. Washington County Beer Board, the Tennessee Supreme Court stated “[i]f this Court were to hold that ignorance of the law is a proper ground for relief under Rule 60.02 . . . it is hard to conceive how any judgment could be safe from assault on that ground.” ***Food Lion, Inc.***, 700 S.W.2d at 896. Under these circumstances, we find no abuse of discretion in the trial court’s decision to deny Coffey relief under Rule 60.02 of Tennessee Rules of Civil Procedure.

The decision of the trial court is affirmed. Costs on appeal are taxed to the Appellant, Carol T. Coffey, III, and his surety, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, JUDGE